

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MELODY JOY CANTU AND DR.	§	
RODRIGO CANTU	§	Case No. 5:20-cv-0746-jkp
Plaintiffs	§	
v.	§	
DR. SANDRA GUERRA AND	§	
DIGITAL FORENSICS	§	
CORPORATION LLC	§	
Defendants	§	

**DEFENDANT DIGITAL FORENSICS CORPORATION LLC'S
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR
PLAINTIFFS' FAILURE TO STATE A CLAIM, DEFENDANTS'
ORIGINAL ANSWER & AFFIRMATIVE DEFENSES
SUBJECT TO IT'S MOTION TO DISMISS**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW, Defendant Digital Forensics Corporation ("DFC") by and through its attorney, Jerry Rios, and files this motion to dismiss plaintiffs' suit for failure to state a claim upon which relief can be granted, as authorized by Federal Rule of Civil Procedure 12(b)(6). In addition, DFC's Original Answer is presented herein, subject to its motion to dismiss.

INTRODUCTION

1. Plaintiffs are Melody Joy Cantu and Dr. Rodrigo Cantu; defendants are Dr. Sandra Guerra and Digital Forensics Corporation, LLC ("DFC").
2. Plaintiffs sued defendants for fourteen causes of action related to a marital dispute and allegations of computer hacking and illegal surveillance.

3. In their complaint, plaintiffs did not state a claim upon which relief can be granted. Therefore, the Court should dismiss the plaintiffs' suit against DFC.

ARGUMENT

4. The Court has authority to dismiss a suit for failure to state a claim upon which relief can be granted if the complaint does not state factual allegations showing that the right to relief is plausible and above mere speculation. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56, 570 (2007).

5. In the complaint, plaintiffs alleged various allegations against DFC in its fourteen causes of action related to DFC's alleged participation in accessing plaintiffs' computers and networks and hacking and/or surveilling same.

6. While DFC performs work in the areas of digital evidence and prepares Phase 1 and Phase 2 investigation reports, it did not and does not have a contract with Defendant Guerra. DFC prepared a Phase 1 Report for 1ST All File Recovery, LLC, a separate and distinct Ohio limited liability company.

CONCLUSION

7. Because plaintiffs did not state a claim upon which relief can be granted, the Court should dismiss this suit against DFC.

DFC'S ORIGINAL ANSWER

[Introduction]

1. Defendant DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 1 of Plaintiff's First Amended Complaint.
2. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the remaining allegation(s) in Paragraph 2 of Plaintiff's First Amended Complaint.
3. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 3 of Plaintiff's First Amended Complaint.
4. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 4 of Plaintiff's First Amended Complaint.
5. DFC denies the remaining allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the remaining allegation(s) against Guerra in Paragraph 5 of Plaintiff's First Amended Complaint.
6. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the remaining allegation(s) against Guerra in Paragraph 6 of Plaintiff's First Amended Complaint.

[The Parties]

7. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 7 of Plaintiff's First Amended Complaint.

8. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 8 of Plaintiff's First Amended Complaint.

9. DFC admits that it is an Ohio based limited liability company but denies that it has an office in San Antonio, Texas. DFC admits that it advertises itself as an expert on its website but lacks knowledge or information sufficient to form a belief about the truth of the remaining allegation(s) against it in Paragraph 9 of Plaintiff's First Amended Complaint.

[Jurisdiction and Venue]

10. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 10 of Plaintiff's First Amended Complaint.

11. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 11 of Plaintiff's First Amended Complaint.

12. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 12 of Plaintiff's First Amended Complaint.

13. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 13 of Plaintiff's First Amended

Complaint.

14. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 14 of Plaintiff's First Amended Complaint.

[Facts]

15. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 15 of Plaintiff's First Amended Complaint.

16. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 16 of Plaintiff's First Amended Complaint.

17. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 17 of Plaintiff's First Amended Complaint.

18. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 18 of Plaintiff's First Amended Complaint.

19. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 19 of Plaintiff's First Amended Complaint.

20. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 20 of Plaintiff's First Amended

Complaint.

21. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 21 of Plaintiff's First Amended Complaint.

22. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 22 of Plaintiff's First Amended Complaint.

23. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 23 of Plaintiff's First Amended Complaint.

24. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 24 of Plaintiff's First Amended Complaint.

25. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 25 of Plaintiff's First Amended Complaint.

26. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 26 of Plaintiff's First Amended Complaint.

27. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 27 of Plaintiff's First Amended Complaint.

28. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 28 of Plaintiff's First Amended Complaint.

29. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 29 of Plaintiff's First Amended Complaint.

30. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 30 of Plaintiff's First Amended Complaint.

31. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 31 of Plaintiff's First Amended Complaint.

32. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 32 of Plaintiff's First Amended Complaint.

33. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 33 of Plaintiff's First Amended Complaint.

34. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 34 of Plaintiff's First Amended Complaint.

35. DFC lacks knowledge or information sufficient to form a belief about

the truth of the allegation(s) in Paragraph 35 of Plaintiff's First Amended Complaint.

36. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 36 of Plaintiff's First Amended Complaint.

37. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 37 of Plaintiff's First Amended Complaint.

38. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 38 of Plaintiff's First Amended Complaint.

39. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 39 of Plaintiff's First Amended Complaint.

40. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 40 of Plaintiff's First Amended Complaint.

41. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 41 of Plaintiff's First Amended Complaint.

42. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 42 of Plaintiff's First Amended

Complaint.

43. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 43 of Plaintiff's First Amended Complaint.

44. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 44 of Plaintiff's First Amended Complaint.

45. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 45 of Plaintiff's First Amended Complaint.

46. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 46 of Plaintiff's First Amended Complaint.

47. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 47 of Plaintiff's First Amended Complaint.

48. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 48 of Plaintiff's First Amended Complaint.

49. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 49 of Plaintiff's First Amended Complaint.

50. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 50 of Plaintiff's First Amended Complaint.

51. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 51 of Plaintiff's First Amended Complaint.

52. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 52 of Plaintiff's First Amended Complaint.

53. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 53 of Plaintiff's First Amended Complaint.

[FIRST CAUSE OF ACTION]

54. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 54 of Plaintiff's First Amended Complaint.

55. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 55 of Plaintiff's First Amended Complaint.

56. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 56 of Plaintiff's First Amended Complaint.

57. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 57 of Plaintiff's First Amended Complaint.

58. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 58 of Plaintiff's First Amended Complaint.

[SECOND CAUSE OF ACTION]

59. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 59 of Plaintiff's First Amended Complaint.

60. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 60 of Plaintiff's First Amended Complaint.

61. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 61 of Plaintiff's First Amended Complaint.

62. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 62 of Plaintiff's First Amended Complaint.

[THIRD CAUSE OF ACTION]

63. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 63 of Plaintiff's First Amended

Complaint.

64. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 64 of Plaintiff's First Amended Complaint.

65. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 65 of Plaintiff's First Amended Complaint.

66. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 66 of Plaintiff's First Amended Complaint.

67. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 67 of Plaintiff's First Amended Complaint.

[FOURTH CAUSE OF ACTION]

68. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 68 of Plaintiff's First Amended Complaint.

69. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 69 of Plaintiff's First Amended Complaint.

70. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against

Guerra in Paragraph 70 of Plaintiff's First Amended Complaint.

71. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 71 of Plaintiff's First Amended Complaint.

72. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 72 of Plaintiff's First Amended Complaint.

[FIFTH CAUSE OF ACTION]

73. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 73 of Plaintiff's First Amended Complaint.

74. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 74 of Plaintiff's First Amended Complaint.

75. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 75 of Plaintiff's First Amended Complaint.

76. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 76 of Plaintiff's First Amended Complaint.

77. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 77 of Plaintiff's First Amended

Complaint.

[SIXTH CAUSE OF ACTION]

78. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 78 of Plaintiff's First Amended Complaint.

79. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 79 of Plaintiff's First Amended Complaint.

80. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 80 of Plaintiff's First Amended Complaint.

81. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 81 of Plaintiff's First Amended Complaint.

82. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 82 of Plaintiff's First Amended Complaint.

[SEVENTH CAUSE OF ACTION]

83. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 83 of Plaintiff's First Amended Complaint.

84. DFC lacks knowledge or information sufficient to form a belief about

the truth of the allegation(s) in Paragraph 84 of Plaintiff's First Amended Complaint.

85. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 85 of Plaintiff's First Amended Complaint.

86. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 86 of Plaintiff's First Amended Complaint.

87. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 87 of Plaintiff's First Amended Complaint.

[EIGHTH CAUSE OF ACTION]

88. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 88 of Plaintiff's First Amended Complaint.

89. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 89 of Plaintiff's First Amended Complaint.

90. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 90 of Plaintiff's First Amended Complaint.

91. DFC denies the specific allegations against it but lacks knowledge or

information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 91 of Plaintiff's First Amended Complaint.

92. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 92 of Plaintiff's First Amended Complaint.

[NINTH CAUSE OF ACTION]

93. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 93 of Plaintiff's First Amended Complaint.

94. DFC denies the truth of the allegation(s) in Paragraph 94 of Plaintiff's First Amended Complaint.

95. DFC denies the truth of the allegation(s) in Paragraph 95 of Plaintiff's First Amended Complaint.

96. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 96 of Plaintiff's First Amended Complaint.

97. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 97 of Plaintiff's First Amended Complaint.

[TENTH CAUSE OF ACTION]

98. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 98 of Plaintiff's First Amended

Complaint.

99. DFC denies the truth of the allegation(s) in Paragraph 99 of Plaintiff's First Amended Complaint.

100. DFC denies the truth of the allegation(s) in Paragraph 100 of Plaintiff's First Amended Complaint.

101. DFC denies the truth of the allegation(s) in Paragraph 101 of Plaintiff's First Amended Complaint.

102. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 102 of Plaintiff's First Amended Complaint.

103. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 103 of Plaintiff's First Amended Complaint.

[ELEVENTH CAUSE OF ACTION]

104. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 104 of Plaintiff's First Amended Complaint.

105. DFC denies the truth of the allegation(s) in Paragraph 105 of Plaintiff's First Amended Complaint.

106. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 106 of Plaintiff's First Amended Complaint.

107. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 107 of Plaintiff's First Amended Complaint.

108. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 108 of Plaintiff's First Amended Complaint.

[TWELFTH CAUSE OF ACTION]

109. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 109 of Plaintiff's First Amended Complaint.

110. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 110 of Plaintiff's First Amended Complaint.

111. DFC denies the truth of the allegation(s) in Paragraph 111 of Plaintiff's First Amended Complaint.

[THIRTEENTH CAUSE OF ACTION]

112. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 112 of Plaintiff's First Amended Complaint.

113. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 113 of Plaintiff's First Amended Complaint.

114. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 114 of Plaintiff's First Amended Complaint.

115. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 115 of Plaintiff's First Amended Complaint.

116. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 116 of Plaintiff's First Amended Complaint.

117. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 117 of Plaintiff's First Amended Complaint.

118. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 118 of Plaintiff's First Amended Complaint.

119. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 119 of Plaintiff's First Amended Complaint.

120. DFC lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) in Paragraph 120 of Plaintiff's First Amended Complaint.

121. DFC lacks knowledge or information sufficient to form a belief about

the truth of the allegation(s) in Paragraph 121 of Plaintiff's First Amended Complaint.

[FOURTEENTH CAUSE OF ACTION]

122. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 122 of Plaintiff's First Amended Complaint.

123. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 123 of Plaintiff's First Amended Complaint.

124. DFC denies the specific allegations against it but lacks knowledge or information sufficient to form a belief about the truth of the allegation(s) against Guerra in Paragraph 124 of Plaintiff's First Amended Complaint.

AFFIRMATIVE DEFENSES

125. DFC is not liable to plaintiffs for any of their claims under the Computer Fraud & Abuse Act (causes of action 1-8) because the statute of limitations bars the plaintiffs' claims. The statute of limitations for this cause of action is two (2) years.

126. DFC is not liable to plaintiffs for any of their claims under the Computer Fraud & Abuse Act (causes of action 1-8) because the statute's damage threshold bars the plaintiffs' claims. The damage threshold is \$5,000.00 and the plaintiffs cannot prove that they suffered damages, as defined by the statute, of or in excess of \$5,000.00.

127. DFC is not liable to plaintiffs for any of their claims under Texas Civil Practice & Remedies Code § 143.001 (causes of action 9-11) because the statute of limitations bars the plaintiffs' claims. The statute of limitations for this cause of action is two (2) years.

128. DFC is not liable to plaintiffs for their claim under 18 U.S.C. §§ 2510 et. seq. (cause of action 12) because the statute of limitations bars the plaintiffs' claim. The statute of limitations for this cause of action is two (2) years.

129. DFC is not liable to plaintiffs for their claim of malicious prosecution (cause of action 13) because the statute of limitations bars the plaintiffs' claim. The statute of limitations for this cause of action is one (1) year.

130. DFC is not liable to plaintiffs for their claim intentional infliction of emotional distress (cause of action 14) because the statute of limitations bars the plaintiffs' claim. The statute of limitations for this cause of action is two (2) years.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Digital Forensics Corporation, LLC prays that the Court grant its motion to dismiss and in the alternative, find that the Plaintiffs take nothing by their lawsuit against it and for such further relief, both general and special, at law or in equity, to which Defendant Digital Forensics Corporation, LLC may be justly entitled.

Respectfully submitted,



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Attorney for Defendant
Digital Forensics Corporation LLC

CERTIFICATE OF SERVICE

I certify that on October 7, 2020, a true and correct copy of the foregoing document was served via CM/ECF in accordance with the Federal Rules of Civil Procedure, on the attorneys of record listed below.

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Jerry Rios